

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

OREGON ADVOCACY CENTER,
et al.,

Plaintiffs,

v.

BOBBY MINK, et al.,

Defendants.

Case No. 3:02-cv-00339-AN

JAROD BOWMAN, et al.,

Plaintiffs,

v.

DELORES MATTEUCCI, et al.,

Defendants.

Case No. 3:21-cv-01637-AN

LEGACY HEALTH SYSTEM, et al.,

Plaintiffs,

v.

SAJEL HATHI, in her official
capacity as Director of Oregon
Health Authority,

Defendant.

Case No. 6:22-cv-01460-AN

November 18, 2024

Portland, Oregon

Status Conference

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ADRIENNE NELSON

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

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21 ALSO PRESENT: Dr. Debra Pinals (by video)

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(P R O C E E D I N G S)

(November 18, 2024; 9:15 a.m.)

* * * * *

THE COURT: Please be seated. Good morning. We're here in Case No. 3:02-cv-0039 -- that's the lead case -- Disability Rights Oregon, Metropolitan Public Defenders Services and A.J. Madison, plaintiffs, versus the -- I'm sorry, essentially what we call it, Mink, Bowman, and Legacy Health cases, for lack of a shorter word. The other two cases, member cases are 3:21-cv-01637 and Case No. 6:22-cv-01460.

This is the time and place set for a status conference on all three cases. I do acknowledge that in the member case 6:22-cv-01460, there has been a motion to dismiss filed by the defendants, but it may come up that we have a different focus this morning.

If counsel will identify themselves and the parties they represent, officially putting their appearances on the record, we will begin.

MR. MERRITHEW: Good morning, Your Honor. Jesse Merrithew representing Metropolitan Public Defenders.

THE COURT: All right.

MR. BOYER: Good morning, Your Honor. Dave Boyer representing Disability Rights Oregon.

THE COURT: All right. Good morning.

MS. SCOTT: Good morning, Carla Scott from the Oregon

1 Department of Justice for the Oregon Health Authority and the
2 Oregon State Hospital.

3 MS. CONBERE: Jill Conbere, also from the Oregon
4 Department of Justice for Oregon State Hospital and Oregon
5 Health Authority.

6 MR. NEIMAN: Good morning, Your Honor. Eric Neiman
7 appearing for hospital -- the hospital parties.

8 THE COURT: Yes.

9 MR. NEIMAN: Legacy Health, Providence Health &
10 Services, PeaceHealth, St. Charles Health System, who are amici
11 in the Bowman claims and plaintiffs in the Legacy v. OHA case.

12 THE COURT: Thank you.

13 MR. WILLIAMS: Good morning, Your Honor. Billy
14 Williams on behalf of amici district attorneys Kevin Barton,
15 Paige Clarkson, and John Wentworth.

16 MR. GARZA: Good morning, Your Honor. Keith Garza
17 for amici state court judges, Presiding Judge Matthew Donohue;
18 Presiding Judge Jonathan Hill, and Judge Nan Waller.

19 THE COURT: Who I see is present in the courtroom.

20 MR. GARZA: In the courtroom, Your Honor, yes.

21 MS. OLSON: Erin Olson on behalf of crime victims,
22 represented by the Oregon Crime Victims Law Center.

23 MR. PETTIFER: Your Honor, I'm John Pettifer with
24 Marion County.

25 THE COURT: I was wondering where Marion County was.

1 Do you want to come up?

2 What was your name again?

3 MR. PETTIFER: John Pettifer.

4 THE COURT: Thank you. So that was one question I
5 did not have to ask.

6 MR. MCMAHON: Eamon McMahon on behalf of Washington
7 County.

8 THE COURT: Please do and say your last name again.

9 MR. MCMAHON: McMahon.

10 THE COURT: Thank you.

11 And we do have Dr. Pinals, who is our neutral expert,
12 on -- participating by video, and she's on screen, so hopefully
13 you can all see her.

14 Does everyone have enough room? Okay. All right.

15 So, as I have indicated, I do know that there was a
16 second amended complaint filed in Case No. -- in member case
17 6:22-cv-01460, and then there was a motion to dismiss filed by
18 the defendants, and we are working through the briefing
19 schedule on that. So it's not ripe yet.

20 I also wanted to acknowledge that since we had come
21 together for the status conference, I recognize that you had a
22 mediation that happened in August, and that Judge Beckerman had
23 indicated that nothing had been since scheduled, and I
24 understand that we're going to talk about next steps or what
25 will happen during this time that we have scheduled for the

1 status conference.

2 Also what happened was that I had received notice
3 from the State Hospital that they were not able to comply
4 because of an order that had been issued by Judge Broyles, and
5 then they subsequently came into compliance. And then what I
6 did receive as a submission from amici judges was a status
7 conference submission that I have considered and read, in
8 addition to Dr. Pinal's tenth report that we did release to be
9 put up for the public's information and on the website.

10 So I would like to hear from each of you, but
11 starting with plaintiffs as to what efforts have been made to
12 resolve the issues in the case so that I can figure out where
13 we go next.

14 Also, if you're contemplating wanting to engage in
15 mediation again with Judge Beckerman, as you give me your
16 update, please let me know that.

17 And we'll begin with plaintiffs. Just give me one
18 second to get all my paperwork organized so that I can reach
19 for what I need to if I need it, and then -- just give me a
20 couple of -- You can start.

21 MR. MERRITHEW: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. MERRITHEW: I think that Dr. Pinal's tenth
24 report, a detailed summary of what has been done since we last
25 got together, accurately summarizes what needs to happen next

1 in terms of her recommendations.

2 For the Court's information, there was at least one
3 agreement reached in the mediation, which was an expansion of
4 the safety valve, but that's contingent upon the State
5 regaining compliance. And so once the State is in compliance,
6 we will submit to the Court a proposed expansion of the safety
7 valve, which would allow a little more leeway for the district
8 attorneys to use that when appropriate.

9 THE COURT: Are you able to kind of tell me what the
10 expansion is at this point or do you not feel comfortable?

11 MR. MERRITHEW: Yes, I think that's a solid
12 agreement, so I'm free to share it. It's -- currently I think
13 the class of crimes that is eligible for the safety valve is
14 limited to those which result in -- threaten serious physical
15 injuries, and we're going to expand that somewhat to all
16 violent felonies, to allow for the DAs to use their judgment in
17 determining which cases would be appropriate for that
18 additional six months, everything else to remain the same.
19 That expansion is a recognition of the fact that the district
20 attorneys have been true to their word in using that safety
21 valve fairly infrequently, and so it hasn't been a major driver
22 in the State's noncompliance.

23 So that was the one solid agreement we got out of the
24 mediation. I think the mediation was also useful in hearing
25 from amici in what they see as problems. I'll note that pretty

1 shortly after the mediation, the State sent out their request
2 for information to all the counties to try and find out from
3 the counties' perspectives what could be done, both in the
4 immediate future and in the longer term, in order to start to
5 expand the availability of services within the local
6 communities to treat people, because I think everybody
7 recognizes that that's where we're really falling down. We got
8 some very substantive feedback in a very short amount of time,
9 and have worked very hard to try and see what could be
10 accomplished, which is how the recommendations that are in
11 Dr. Pinals' tenth report, in terms of what the State intends to
12 do over the near term and the longer term, came to be in front
13 of the Court.

14 So I think the -- that report, we just got it, I
15 think, Thursday or Friday of last week. Haven't had a ton of
16 time to determine from plaintiffs' perspective whether there's
17 any action that we're asking the Court to take now, and we're
18 continuing to contemplate whether there's anything that the
19 Court could or should do to ensure that the steps outlined --
20 proposed by the State and then adopted by Dr. Pinals as her
21 recommendations, to make sure those things happen, and happen
22 as quickly as they can, because I think those are the things
23 that we need in order to get us on the right path.

24 THE COURT: Okay. Thank you.

25 MR. BOYER: Your Honor, I don't have much to add. I

1 will echo our faith in those recommendations from Dr. Pinal.
2 We're cautiously optimistic, given that many of those
3 recommendations are based on legislative action, so we'll
4 definitely be watching how much progress gets made there.

5 THE COURT: After I hear from the State, I would like
6 to get an update, because -- along what's happening
7 legislatively, because I understood that there were two working
8 groups, and the representation from the collective parties on
9 all of this. But if I have remembered correctly,
10 Mr. Merrithew, you have been part of at least one of the
11 working groups.

12 MR. MERRITHEW: Yes, Your Honor. I was part of -- I
13 think it's called Mink working group. That was headed by Kevin
14 Neely. He finalized the work of the group in the form of a
15 report. And it's a public document, and I would be happy to
16 get it to you.

17 THE COURT: I don't have a copy and I would like a
18 copy.

19 Can you give me a synopsis?

20 MR. MERRITHEW: Yes. There was not consensus among
21 the work group about what timelines ought to be adopted by the
22 legislature. There was some consensus that community
23 restoration ought to be adopted but no consensus on what those
24 would look like. There was not consensus on what hospital
25 limitations ought to -- there was consensus that the State

1 needed to work toward having a more centralized and efficient
2 system for getting forensic evaluations off to the state courts
3 because there was an identified need there, that that was one
4 of the roadblocks in terms of moving people through community
5 restoration. That's what I can remember off the top of my head
6 in terms of this report.

7 THE COURT: Is there going to be any type of bills,
8 funding requested in the upcoming legislative session?

9 MR. MERRITHEW: Yes. I think Ms. Scott could
10 probably talk more to --

11 THE COURT: Because I would like to know.

12 Thank you.

13 MS. SCOTT: Good morning, Your Honor.

14 I agree with plaintiffs' counsel that Dr. Pinals'
15 report accurately describes all of the efforts that have been
16 underway to increase capacity within the community and increase
17 the level of services provided by FES, and that my clients are
18 extremely committed to following through on all of the
19 recommendations in Dr. Pinals' report.

20 THE COURT: Are you in agreement with all of them?

21 MS. SCOTT: Yes.

22 THE COURT: Are you in agreement with the fact that
23 she believes that many of them can be implemented now, and
24 there are a couple that are contingent on other things
25 happening?

1 MS. SCOTT: That's correct. And we focused, in
2 responding to the RFI responses from the counties, we really
3 focused on what can we do now, where can we move money around
4 from different programs to address the immediate needs. And
5 one of the things we're doing is hiring three new full-time FES
6 evaluators to help -- to get people evaluated so they can get
7 through the system. So the hiring effort has started, and
8 we're hopeful that that will have some immediate impact.

9 There is also -- also has been substantial funding
10 over the last two different years. The capacity is just now
11 coming on line. So hopefully we will start to see some
12 improvement in capacity and community placements, and that that
13 will continue.

14 In terms of the legislation, in Dr. Pinal's report is
15 the legislation that OHA will be supporting and moving forward
16 for restoration time limits, both in the hospital and in the
17 community, as well as limiting admissions to OSH. The main
18 limit -- I think the only limit is no nonperson misdemeanor
19 offense -- only offenses will be coming into the hospital if
20 that legislation passes. OHA is --

21 THE COURT: Say that last part of it again, that only
22 what?

23 MS. SCOTT: So the current federal order, remedial
24 order prevents OSH -- O-S-H -- from admitting defendants whose
25 only crime is a nonperson misdemeanor. So we are intending to

1 include that in the proposed legislation in conjunction with
2 the limits on inpatient and community restoration period.

3 THE COURT: That will increase the number of people?

4 MS. SCOTT: That will decrease the number of people
5 coming into the hospital. It will maintain the status quo
6 under the current federal order, and if that happens, we will
7 no longer need the federal order for that piece.

8 THE COURT: And that's the goal, but I'm wanting to
9 know how long it's going to take you to get into compliance,
10 because I'm quite aware of how long this has been going on, and
11 although I'm newer to the case because it's been reassigned, I
12 think that it's time to just do something else than what has
13 been done.

14 MS. SCOTT: I think the list of recommendations in
15 Dr. Pinal's tenth report represents that doing something else
16 that hasn't yet been done. There is widespread support among
17 the State to propose and socialize and move forward with the
18 legislation. Dr. Pinal has worked very hard with the State,
19 pushed extremely hard on my clients to figure out what we can
20 do now, and I think what is in her report is what we can do
21 now. The main driver of the noncompliance is the dramatic
22 increase in aid-and-assist orders over the last four to five
23 months.

24 THE COURT: I understand that, but I also am -- that
25 clearly the -- at least the state judicial branch has a

1 different perspective of that. And I don't know how to
2 reconcile it.

3 MS. SCOTT: I think we reconcile it through
4 Dr. Pinals' expertise, who has been studying the data since she
5 was first hired three or four years ago and is intimately
6 familiar with the data and the trend. She is the expert on
7 that.

8 But I can stand here and tell you that the State is
9 doing everything that it can possibly think of to do to get
10 back into compliance, and I think Dr. Pinals at this point is
11 in agreement with that, and we cannot think of anything else at
12 this point to move us forward in compliance faster.

13 THE COURT: Well, I have some ideas, so --

14 MS. SCOTT: We are regularly being -- there are
15 contempt proceedings in Washington and Marion County court.
16 About once a month a couple new contempt orders are entered
17 against the State.

18 THE COURT: Is that moving you in any kind of way?

19 MS. SCOTT: No. What they're asking for is for their
20 defendants to jump the line, the admissions line, and so we
21 can't comply with those orders, and so then the patient
22 ultimately gets admitted and then what we're seeing is that
23 state court judges issuing remedial contempt orders, fining the
24 State, and it hasn't had any effect. We have to follow the
25 equitable admissions list at this time pursuant to Dr. Pinals'

1 recommendations, which have been incorporated into the federal
2 remedial order. So we cannot jump the line for the state court
3 contempts.

4 THE COURT: Understood. Thank you.

5 Who would like to give me an update from the
6 defendants? Everybody will, but someone has to start.

7 MR. GARZA: Mr. Neiman is looking at me, so I'll
8 start. Your Honor, Keith Garza for the amici state court
9 judges.

10 I'm not sure that I have much to add -- or am
11 authorized to add much to what my clients put forward in their
12 submission to you. Unfortunately, we had to submit it on
13 Friday. That's was as fast as we could. I would have liked to
14 have it earlier so there could be more deliberations. We have
15 what we have, consisting primarily of kind of essentially a
16 platform to deliver to you OJD-derived statistics for whatever
17 use or benefit you choose to make.

18 THE COURT: Well, that's why when I got it -- and I
19 recognize that I did get it Friday afternoon, but I did see it
20 and I printed it out and I've read it, and I will give it
21 consideration. I did not have a lot of time to give it
22 consideration.

23 But it seemed to me from your submission, what you're
24 encouraging this Court to do at this point is begin to consider
25 or hold the Oregon Health Authority and the Oregon State

1 Hospital in contempt.

2 MR. GARZA: Well, considering -- what we did before,
3 Your Honor, was in our role as amici, and recognizing the
4 nature of the role that judges play, was to offer perspectives,
5 offer data, and with respect to Judge Mosman's August 16th and
6 September 1 orders, offer our comparison of the analysis in
7 those orders to our application of our understanding of federal
8 law. And basically, you know, that brief was filed, I believe,
9 in September of 2022, and detailed federal decisions. It made
10 reference to prison reform litigation, which were efforts to
11 try to kind of standardize structural injunctions across the
12 prison reform context. And basically our message was that it
13 appeared that there was this ratcheting up of increasingly
14 strict federal sanctions by federal judges in order to do what
15 they had to do, which was to enforce their injunctions and to
16 prevent violations of the Constitution, and that the last one
17 of those things, the most serious thing for a federal judge to
18 do would be to override, overwrite, invalidate existing neutral
19 and constitutional state law. And what we respectfully tried
20 to argue to Judge Mosman was we thought that there were steps
21 before doing that, which was represented in the September 1
22 order, that the Court could explore, one of which, the most
23 obvious one of which was to exercise the court's contempt
24 powers. And we had an argument about that in November of 2022,
25 and Judge Mosman decided not to go with that route.

1 And so we're simply, you know, kind of providing the
2 Court with a history of what we had done before, pointing out
3 that we seem to be, in our perspective, kind of in the same
4 situation, and that something needs to happen.

5 You know, I apologized to Jesse -- Mr. Merrithew out
6 front before we came in that I might quote from him again
7 when -- from what he said during the status conference during
8 the summer. But it was something with which I personally
9 agree, and he said, "I continue to view this Court's ability to
10 address the problem as largely a Band-Aid until the legislature
11 does what it needs to do and fully funds a functional
12 behavioral health system in the state."

13 I think we agree with that. And, retrospectively, we
14 look at the 2023 legislative session, which I think was the
15 one -- I hope I'm right about this, I think it was Senate Bill
16 219, which was an effort to codify what were then the timelines
17 that had been in place, put in place by the September 1 order.
18 And that didn't even get a legislative hearing. So nothing was
19 done in 2023 legislatively, nothing happened in the short
20 session last year. And again, you know, we had the work groups
21 that have happened and a lot of effort and a lot of time and a
22 lot of study and a lot of money. And I'm not aware of a
23 working draft of a bill right now for the 2025 session, and of
24 course in November, that is possibly something of concern. I
25 assume that there are short titles out there or relating

1 clauses that are broad enough to allow legislation to go
2 forward this session, but we're just kind of where we were
3 before, and it just seems that this is an awful long time to
4 kind of abide violations, and for the period in which the
5 hospital was going to be -- was in compliance, it seemed to be
6 very tenuous and awfully fragile.

7 And when you look at these tremendous increases in
8 the number of referrals, I mean -- I guess that's a relative
9 term. I mean, they're in the dozens or, you know, one month
10 it's up 15, the next month it's down ten. It seems like a
11 system that is constructed that can't adapt to those kind of
12 fluctuations, is one that is kind of, you know, at potential
13 peril.

14 So our point simply is that, you know, to kind of
15 endorse what Mr. Merrithew said and try to figure out what's
16 the best way to make sure that in 2025, the legislature
17 addresses this problem, this crisis in a meaningful way, and
18 whether that's to see what happens in 2025 and then drop a
19 hammer or think about something before to make sure that it's
20 impressed upon folks that this needs to be dealt with, I don't
21 know, but we've just provided, you know, our data and our
22 perspectives. I stayed away from trying to do anything
23 anecdotally, but if the Court is interested in that or if the
24 Court is interested in anything else, we're happy to do
25 whatever you think we can provide that would be helpful.

1 THE COURT: Thank you.

2 MR. GARZA: Sure.

3 THE COURT: Why don't I hear from you, Mr. Williams,
4 next.

5 MR. WILLIAMS: Thank you, Your Honor.

6 First off, let me state on behalf of my clients that
7 they are in complete agreement with the brief filed by
8 Mr. Garza on Friday.

9 THE COURT: All right.

10 MR. WILLIAMS: In having reviewed it, I think he laid
11 out the realities of where we're at, so I'll start with that.

12 On behalf of the district attorneys, they are greatly
13 concerned about the state of affairs, in particular at OSH. I
14 think it's fair to say, notwithstanding -- Let me premise my
15 comments to come on this. There's no question that folks have
16 worked really hard at all levels to try to figure this out.
17 And since we got involved a little over two years ago, and we
18 started promoting the idea of mediation, and that's taken place
19 two different times. Although it was tough to accomplish
20 really anything last summer because of the lack of compliance
21 by the State, the safety valve amendment is contingent on
22 compliance, quite honestly, given the record since then, I
23 don't really see that as a likelihood.

24 So we just -- I will say what I said at the
25 mediation, which is it's almost incomprehensible to me that the

1 study that was started over a year ago and the final report was
2 published in June, that the study didn't address the
3 justice-for-all population that is the heart and soul of this
4 23-year-old injunction. I don't get it. If you're going to
5 try to fix a problem, and you want one more study done on
6 behalf of the State of Oregon, then study the problem.

7 Now, there's no question the recommendations for the
8 nine regions mentioned in the report and what's needed at the
9 local level, and the stats included in that, those were
10 fantastic, because it states the obvious around the state of
11 Oregon, what we don't have. But it doesn't address the
12 underlying issue in this litigation, which is nonsensical, in
13 my view.

14 So, honestly, at this point I can represent on behalf
15 of my clients, we're seriously considering withdrawing as amici
16 because of the cost involved and, most importantly, the lack of
17 progress. We'll be having some discussion about that in the
18 very, very near future. But I just don't -- I look at what has
19 gone on in the state of Washington and that litigation and the
20 history of it and the contempt, which frankly, as I view it --
21 and maybe I'm wrong -- that's what finally prompted the State
22 to do what they needed to do, which is build capacity.

23 THE COURT: That's one perspective. It looks like
24 they continue to be in litigation, and it's litigation at the
25 Ninth Circuit level versus at the district level.

1 MR. WILLIAMS: Right. But in recent media coverage
2 of the construction of the new facility after all those
3 years -- and I mention that because obviously they -- the
4 State, starting with the governor, took it as a priority to fix
5 it, and they're in the process of doing that. And that's
6 costly. But at the end of the day, what else do you do if you
7 really want to fix a problem? You fix the problem.

8 I'm not confident that given that the struggles the
9 legislature is going to be in with the competing interests for
10 State money, I don't know where this fits into their
11 priorities. And as pointed out by Mr. Garza a moment ago, they
12 had the last two -- the long session, the last short session,
13 and we didn't get anywhere with it, and here we are.

14 And I like to be an optimist like everybody else, but
15 I throw in a bit of realism. Nothing is going to change with
16 compliance in the state of Oregon until the problem is fixed.
17 It's just not going to happen. And so to do that, I mean, look
18 back at the history -- and I've studied this. The media has
19 done a great job of covering, let's say, the last 30 years, but
20 in particular the last 20 years, and the failings on the part
21 of the State of Oregon to fix its mental health system. Unless
22 it's one of the top priorities, we're going to be back here in
23 six months or a year, and you're going to be faced with the
24 same question: What have you done?

25 I loved your quote a moment ago, "It's time to do

1 something else." Well, it's past that time, Your Honor, well
2 past it. And the thing is, people are suffering. The people
3 waiting for release who are ready to be released, they're
4 suffering. The people who are waiting for evaluations so that
5 the judges in our counties in Oregon have an informed decision
6 to make, they're suffering. And this isn't going to be fixed
7 with yet another study to go on a bookshelf and gather dust,
8 which there's a whole lot of things that gets studied all over
9 the nation and this state, and I know that because I've read a
10 lot of them on different subjects. So how about it is past
11 time to fix it. And if I could accurately state that we had
12 standing to file a motion for contempt as amici, we would,
13 because that's the only thing that's going to get the State to
14 do what it needs to do to fix it. It's past time, Your Honor.

15 THE COURT: Go ahead.

16 MR. NEIMAN: Does the Court have any questions about
17 what's going on in the civil lawsuit, Legacy side of the case?

18 THE COURT: I don't, but it might behoove everyone to
19 just -- for you to give us -- there is the motion to dismiss
20 that's pending.

21 MR. NEIMAN: Right. The Ninth Circuit reversed Judge
22 Mosman's dismissal order, the case came back to this Court, we
23 filed a second amended --

24 THE COURT: After the status conference, because you
25 came graciously without being a part of the -- formally.

1 MR. NEIMAN: Like Mr. Williams, I was an optimist.

2 THE COURT: And you showed up and you posed the
3 question. You posed the question to the Court at the time was
4 I going to get assigned that case, and I honestly told you at
5 the time I had no idea, and a week later -- maybe less than a
6 week later, it was reassigned, so you're formally in the case
7 now.

8 MR. NEIMAN: Here we are.

9 We filed a second amended complaint, OHA filed a
10 motion to dismiss. Our response brief is due December 11th.
11 Briefing will close January 8th. We're expecting to hear from
12 the Court after that about whether there will be oral argument.

13 THE COURT: Right.

14 MR. NEIMAN: So I don't want to get out ahead of
15 where we are in that case or get out ahead of the Court. It is
16 disheartening to come back here yet again and hear the State
17 say not only are they continuing with constitutional
18 violations, but they're doing everything they can think of to
19 make them stop, and they're still going on.

20 And that has spillover that impacts the community
21 hospitals. There have been more psychiatric units taken over
22 by the State to operate a long-term care system, which is not
23 what acute care hospitals do. So that is the reaction of the
24 community hospitals we represent in this situation. The State
25 in its briefing, in its motion to dismiss our cases, talked

1 about a crisis of capacity as if that's an excuse rather than
2 something the State let happen and has chosen to maintain. We
3 believe at this point that court is the only place to go for
4 relief, a remedy to that situation.

5 THE COURT: Thank you.

6 MR. NEIMAN: Thank you.

7 MR. PETTIFER: Good morning, Your Honor.

8 I would just add that I think we, Marion County,
9 agrees with everything the amici has said ahead of us. I can
10 tell you probably on a weekly basis I get calls related to --
11 from our county staff related to people being discharged into
12 the community and our staff worrying about how do we -- this
13 person we think is dangerous or needs hospital-level care, what
14 do we do? What if they walk out of the community placement?
15 It just puts a really heavy burden, I think, on the county in
16 general, county staff. And so we would definitely support a
17 change.

18 We think capacity is the main issue. We think that
19 if we had more capacity, that would help, and I think -- I can
20 say for the County that if we had the ability to file for
21 contempt, we might do that as well.

22 THE COURT: Well, you don't because you're an amici.

23 MR. PETTIFER: Yes, Your Honor. And I just think we
24 continue to see a major impact in Marion County from the lack
25 of action.

1 Thank you, Your Honor.

2 MR. MCMAHON: I won't belabor the point too much,
3 Your Honor. Washington County takes a very similar position
4 with Marion County and the other amici that have spoken before
5 us. We continue to believe that capacity is sort of the key
6 here. I note that our folks and our office has spoken
7 extensively about sort of the boots-on-the-ground perspective
8 and how an order might look or be shaped and how to address
9 sort of pinchpoints in the system, that sort of what we see
10 going forward is as we're updated and sort of continue to offer
11 that kind of perspective and hopefully shape it in a way that
12 means that county folks, who I can confirm are overworked and
13 severely understaffed and overcapacity, are certainly able to
14 make best use of the resources that we have available to us.

15 THE COURT: Go right ahead. I know you have a
16 slightly different perspective, and you were wanting to make
17 sure that any time we do a release you receive notice, but I'm
18 interested in hearing your update as well.

19 MS. OLSON: Well, I don't have an update. I just
20 want to clarify and correct something Mr. Merrithew said.

21 We did make progress on the safety valve exception,
22 but we agreed to change it to person felonies as opposed to
23 violent felonies.

24 You mentioned the Broyles matter earlier, and if this
25 person felony exception would have been in place, then that

1 issue would have been nonexistent. So person felonies opens up
2 a number of crimes for which the safety valve would apply, and
3 so I just wanted to correct. Mr. Merrithew misspoke a bit.

4 THE COURT: While you're standing, has there been an
5 improvement in notice?

6 MS. OLSON: We have not gotten complaints in notice.
7 It's hard to say because you don't know what you don't know,
8 and there have been an increase in the length of time that
9 folks are staying in custody before they're transferred to the
10 Oregon State Hospital makes me think that perhaps we aren't
11 getting as much notice, but, I mean, the problem is you just
12 don't know if you're not getting it.

13 THE COURT: But you're not getting anything?

14 MS. OLSON: We're not getting cases in the breach, so
15 to speak.

16 THE COURT: Well, that's --

17 MS. OLSON: That's something, yes.

18 THE COURT: That's what I wanted to know.

19 Ms. Scott, I understand that your perspective is that
20 there's nothing else to be done. You know, quite frankly, I'm
21 sure everyone is aware of *Trueblood*. That is another option.
22 It's -- I don't know if that was something that had been
23 contemplated by the plaintiffs in terms of a motion to compel,
24 but I am wanting to know what do you think the timeline is if
25 all of the recommendation of Dr. Pinal's tenth report is

1 implemented that will bring compliance from Oregon Health
2 Authority and Oregon State Hospital?

3 MS. SCOTT: Unfortunately, we do not have projections
4 for --

5 THE COURT: Well, you need to have one, because I am
6 not willing to just continue this whole status conference and
7 get updates. This has been going on for years before I was
8 involved, and when I say that I think something needs to
9 happen, I do think that something needs to happen in the very
10 near future, like less than 60 days.

11 MS. SCOTT: I can tell you that the *Trueblood*
12 situation was extensively discussed with my client, with
13 plaintiffs, with Dr. Pinals, and we used it to get the
14 proposals before you that you see in Dr. Pinals' report,
15 because we think the existing system, it takes time. Things
16 are being built, capacity -- things are coming online.

17 THE COURT: You've had time. I understand it takes
18 time. But what have you done with the time that you've had?

19 MS. SCOTT: We have -- capacity is growing and
20 building. All of it is set out in Dr. Pinals' report. I'd
21 love to hear from her on that. The *Trueblood* compliance
22 situation didn't come necessarily from the fines that were
23 issued there. Those fines were for mostly, as I understand it,
24 from jail diversion programs.

25 THE COURT: I understand that it's a different focal

1 point of litigation. I understand that. But I'm talking about
2 the use of contempt to bring compliance for noncompliance.

3 MS. SCOTT: You know, I would ask for an opportunity
4 to fully brief contempt. I know we did that before with Judge
5 Mosman. The State actors here are not recalcitrant. They are
6 grabbing anything they can possibly grab to build capacity and
7 provide services. At this time, my understanding is Dr. Pinals
8 is not recommending a contempt-based approach.

9 THE COURT: I understand that she's not recommending,
10 it but I can raise it because it's part of what I can order.

11 MS. SCOTT: I understand. I would just ask for an
12 opportunity to brief that and provide witness declarations from
13 my clients and tell the whole story from years and years ago.
14 There is a story to be told of people working hard, and if you
15 look at the money that has been put into communities over time,
16 it has grown each year, doubling, tripling, and now we have a
17 POP that we're putting together for the next session of
18 \$55 million.

19 Contrary to what Mr. Garza's understanding is, there
20 is legislation that is being written. I'm a part of that.
21 When it didn't pass the last time, there were various reasons
22 for it. We had a brand-new administration at the same time the
23 session was starting. There wasn't time to socialize it. That
24 socialization has been going on and will increase and improve.

25 We are, you know, hopeful that the legislature does

1 what it needs to do to fund the system, and we are making that
2 ask. That's set out in Dr. Pinal's report, and we have the
3 support from everyone on the State side to push for that.

4 And I would just ask you -- the session starts in
5 January and ends in June. But I understand the Court's
6 concern. I'm not -- we want to be back in compliance. It's
7 based on the number of new orders.

8 THE COURT: In light of the new orders, how is
9 that --

10 MS. SCOTT: The new aid and assist, the increase in
11 commitment orders to the State Hospital, it was dramatic, and
12 immediately in May and June, we fell out of compliance. And
13 now we have a hard row to work, but we are working, ready to
14 place those very aggressively. We are working on being
15 creative in finding placements for people. We understand if we
16 can get the people ready to be placed placed, we can get in
17 compliance in perhaps 60 days.

18 So, you know, I don't know that we have identified
19 anything -- if we had identified anything else we could do, it
20 would be in Dr. Pinal's report, and I'm not sure that contempt
21 would change that. I understand it is within the Court's
22 power, but we would ask for an opportunity to fully brief it
23 and have witness testimony of the people who are in boots on
24 the ground trying to solve the problem.

25 THE COURT: So when you say that the POP will be

1 submitted, by whom?

2 MS. SCOTT: It will be submitted by the Oregon Health
3 Authority. That's now part of the next session, and it is --
4 the terms of it are detailed in Dr. Pinal's tenth report.

5 THE COURT: What's the likelihood of it being
6 included in any budget? I mean, I understand that POPs are
7 submitted every legislative session, short, long, but what is
8 the priority of this POP, in light of all of the POPs that are
9 being submitted and prepared to be submitted now?

10 MS. SCOTT: I believe we have the governor's support
11 and we have OHA's support. And I'm not a politician. I'm not
12 in the legislature. I can't --

13 THE COURT: I'm not asking you to be a politician. I
14 want to know, as you said, boots on the ground, what is
15 happening. What's happening within the working groups? Are
16 the two legislative working groups supporting the POP as well
17 or --

18 MS. SCOTT: I don't believe that was part of the
19 working group.

20 THE COURT: I don't have that, but do you have
21 legislative support?

22 MS. SCOTT: I don't know what support we have.

23 THE COURT: I want you to find out and let me know,
24 because that's what makes the difference. It's one thing for
25 everyone to be optimistic, as they have, and I am glad to see

1 that so many people have been trying to work collaboratively,
2 but the collaboration is not bearing results, and noncompliance
3 continues and it's increasing, and at some point you have to
4 look for other options. And I think that this is the time that
5 you look for other options, and you need to know very clearly
6 the likelihood of success of what you would like to happen,
7 which is continue to work collaboratively and give people the
8 time and their own autonomy that they can to try and bring in
9 compliance, or does the Court have to consider other options
10 that are disfavored and unpleasant and costly?

11 MS. SCOTT: I have expressed all of that to my
12 clients numerous times. I will do my best to find out what the
13 legislature will do or likely to do, but it is outside -- I
14 don't know that I can promise you --

15 THE COURT: I'm not asking for a promise. I want
16 information.

17 MS. SCOTT: I will do my best. It's up to the
18 legislators and who they will talk to and what they will say,
19 but we will do our best.

20 THE COURT: My question to the plaintiffs, contempt
21 is an option. Are you there? Are you planning to file
22 something?

23 MR. MERRITHEW: We do not plan to file something
24 today. As of right now, Your Honor, no.

25 The struggle that we have is the struggle that I

1 think Mr. Garza just expressed, which is what is the best way
2 to move the State toward compliance? And if I was sure that
3 contempt was the best way, then I would certainly file that
4 motion. I don't know what the best way forward is. And as I
5 said, we just got Dr. Pinals' tenth report the end of last
6 week, so we're still contemplating, you know, what options are
7 available to the Court and what should we suggest.

8 We -- one of the things that we are concerned about
9 in terms of the sort of *Trueblood* type of option is that we
10 think that one of the main reasons why progress was stymied over
11 the course of this case was the change in leadership between
12 the governor's transition and what we have currently at the top
13 of the OHA, at the top of the State Hospital is an entirely new
14 group of leaders and --

15 THE COURT: But that was two years ago.

16 MR. MERRITHEW: It was. And I'm not here to make
17 excuses for them, but I also struggle to see how we're going to
18 improve things if we have yet another group of new leaders.
19 Who would they be? Who would be dictating the terms of how the
20 money is spent and what the staffing is and all those types of
21 things and how would they be --

22 THE COURT: So what are you saying? I mean, I
23 understand that there's been some solidity and some change, but
24 everyone currently in place has been in place for some time.
25 Are there anticipated departures?

1 MR. MERRITHEW: Not that I'm aware of, no.

2 What I'm saying, Your Honor, is the prospect of a
3 court monitor or something along those lines, who comes in and
4 starts dictating on a more granular level how the State ought
5 to be operating its behavioral health system, if I thought
6 that -- I'm not saying that we've taken this option off the
7 table, but at this point my concern is that I don't know who
8 the people would be who would be making those decisions and
9 whether they'd be making those decisions any better than the
10 people we currently have in place.

11 THE COURT: You mean if a court monitor is determined
12 to be the next step --

13 MR. MERRITHEW: Yes, Your Honor.

14 THE COURT: -- in terms of the contempt?

15 MR. MERRITHEW: And in terms of the contempt, I can
16 certainly make the case for contempt, the finding of a contempt
17 against the State, but what's the next step? If we start
18 fining the State, the current defendants we have in the room
19 are the head of the OHA and the head of the State Hospital, and
20 so that money presumably is coming out of those funds. Is that
21 going to do us any good? What can we do with that finding to
22 start to move the State into compliance? And I don't know the
23 answer to that question, which is why I'm not filing a motion
24 as of today.

25 THE COURT: I don't know if the Disability Rights

1 Oregon wants to add anything.

2 MR. BOYER: No. I think we're in the same position,
3 Your Honor. I think contempt at this point isn't where we're
4 going, but as I said in my opening comments, this all depends a
5 lot on legislative action, and perhaps as we go through the
6 session, that decision might be a little bit different. If we
7 can't get some kind of --

8 THE COURT: I'm not going to wait until the session
9 is over.

10 MR. BOYER: I understand.

11 THE COURT: We're going to end up starting -- we're
12 going to have another status conference earlier than that,
13 because we need to make some movement.

14 MR. BOYER: Understood.

15 THE COURT: Dr. Pinals, is there anything you want to
16 add? I mean, I read your report and I think I understand
17 everything, but I don't know, in light of what has happened in
18 terms of my questions and what has been shared, I don't know if
19 you have anything else you want to share. I mean, I'm really
20 curious what you believe, from what you've recommended, how
21 long it will take for the Oregon Health Authority and the
22 Oregon State Hospital to get into compliance, because that
23 timeline is important for the Court to consider, in light of
24 the other options. And I wonder if you have any other
25 suggestions that are not in your plan, in light of what has

1 been brought to the Court's attention today.

2 DR. PINALS: Yes. Thank you, Your Honor. I
3 appreciate the consideration of my opinions.

4 It's -- obviously it's a complex matter that took a
5 long time to get to this point and, unfortunately, it takes
6 time to get out of. Even across the country it's taking states
7 a long time to get out of these issues and, you know, each
8 state has had different solutions, and many of them are not out
9 of the issues of wait list in jails, as we all know.

10 A couple of things that I would say that are really
11 important. First of all, the discharge process is very
12 stalled, and when that -- those issues come to light around the
13 ready-to-place list and the need for looking at the GEI
14 discharges. It really does paint a picture that if there could
15 be movement in the system, there would be more space for new
16 people to be coming in for their restoration services. So one
17 of the recommendations I'm particularly hopeful about is the
18 ECMU recommendation, as well as the forensic evaluators. The
19 ECMU -- Extended Care Management Unit -- was a model that the
20 community suggested. Somebody from Washington County, Chance
21 Wooley, who was meeting with us, suggested and talked about how
22 successful it was at a period of time when *Olmstead* issues were
23 first being brought to light in Oregon, and it allowed for a
24 team to really kind of work the list and work on getting
25 placements for people to -- who are stuck with discharges.

1 The other thing is the new forensic evaluators. As
2 Judge Waller and some of the other amici and others have
3 pointed out, one of the barriers to moving people through the
4 competency system, even in the community, have been the lack of
5 evaluators to be able to do community-based evaluations. When
6 I was doing my site visit, that came up loud and clear. There
7 were several people at the Northwest Regional Reentry Center
8 who were basically stuck because there had not been a current
9 evaluation done on them, and so the case couldn't be moved
10 along.

11 So I think those are some of the now recommendations
12 that will be helpful, as well as some of the education that
13 will be out there, because I think there's a lot of
14 misunderstanding.

15 I also think that it's important to realize that when
16 I first came in, one of the tasks that I was asked to develop
17 were limits on community restoration time frames. And I did
18 take into account many different factors in making those
19 recommendations. When those recommendations came out, and they
20 came out through the Mosman order, there was an almost
21 immediate backlash to the recommendations. And when
22 legislation was attempted to be passed -- now, granted it
23 wasn't done, I think, well. There wasn't any socialization.
24 But there were headwinds to any momentum. And some of those
25 headwinds have come, in my opinion, with all due respect, from

1 some of the views of the amici who have not wanted the
2 recommendations that I made to be the recommendations that go
3 forward for a variety of good reasons and a variety, I think,
4 of reasons that don't fully take into account what community
5 restoration is all about. And I just use that as an example.

6 So my suggestion would be if legislation is going to
7 pass, is that people continue to collaborate and not work
8 against the recommendations. The new recommendations for
9 restoration time limits in the community do take into account
10 the voices that I heard loud and clear from the amici about
11 wanting a step-down from the hospital, which I don't
12 necessarily think clinically makes sense, or forensically, but
13 I do think that that will be the way to get the most successful
14 support, and it allows for people to have some extended period
15 of time in the community if they didn't get restored in the
16 hospital.

17 There was also a study looking at medication access
18 in the hospital, because that was brought up by amici that the
19 hospital was failing in its role of getting medications to
20 people. The studies that were done by the hospital do not bear
21 that out, that in fact there are more rapid access to
22 medications than there were before.

23 What I'm hearing from the clinicians is that what we
24 are seeing is a different kind of clinical patient, and
25 unfortunately, there is no fast solution to serving those

1 people. We're seeing people with more complex co-occurring
2 conditions of substance use and mental illness that don't
3 respond easily to medication, that do have a high proportion
4 that relapse, and hospitalization is not the only solution,
5 especially if it's hospitalization for restoration purposes.

6 So I do think that we have this revolving door of a
7 very, very different, biologically different population that
8 raises a whole host of challenges. Oregon also has the, you
9 know, Measure 110 issue that I think is a confounding variable.
10 I think you've also got the Grants Pass case that is also a
11 confounding variable that can impact the competency population.
12 So not all of those -- in fact, most of those are not solely
13 OHA's fault or to fix, but OHA is responsible for the
14 behavioral health services for the entire population of Oregon
15 publicly in need of those services. So they do have a
16 responsibility to build out community systems of support.

17 And I believe that the request for the POPs is
18 intended to do that, and I recommended strongly that what
19 happens this time, as opposed to what happened last time, is
20 that the socialization of these bills be very, very strong,
21 that there be a lot of education and explanation about why
22 these are necessary priorities for Oregon to get itself out of
23 the Mink/Bowman matter that it is in, and I would urge that the
24 amici, instead of pulling away, lean in to the collaborative
25 work to try and get this legislation, as imperfect as it may be

1 and insufficient as it may be, to try to get this legislation
2 passed.

3 To your question for how long it will take I think it
4 will depend on how the ECMU works. We have discussed concerns
5 that if this is just the gap being asked to do things on top of
6 other duties, it won't be as effective as if it's their
7 full-time responsibilities to make these discharges more
8 successful. It will require working with the counties so
9 everybody is rowing in the same direction, so that when cases
10 are presented in front of the judge, they will be accepted, and
11 it will also require, I think, for the judges to understand the
12 complexity of the community system, which obviously Judge
13 Waller is an expert and does, but not every single judge, I
14 think, has the kind of grounded expertise of looking at the
15 behavioral health systems and the complexity of working with
16 individuals who may have challenges in the world of treating
17 substance use. We recognize that relapse is part of the
18 disease, just like we do with diabetes, and unfortunately, when
19 courts look at those things, those aren't always as tolerated.
20 And so it becomes an issue of an option for a community
21 placement being presented that will be accepted by the court as
22 sufficient to meet the needs of the individual and address some
23 of the risk issues that the courts are seeing in the community.
24 So I think it's really about rowing together, which isn't
25 always easy when everybody is looking at things through their

1 own lens.

2 With that in mind, I said conservatively this latest
3 increase related to the May and June number of orders increase
4 that we saw, I think it will take -- I think four to six months
5 to get out of it, but I understand that something needs to
6 happen sooner. And I think that with the ECMU up and running,
7 with the evaluators that won't actually be starting for another
8 30 to 60 days, we're talking -- you probably won't see as
9 dramatic results at least for 90 days, if not 120 days, before
10 you'll start to see the shift start to turn in the other
11 direction.

12 And that's -- I will also say that we came up with
13 benchmarks in the beginning of this case, and the benchmarks
14 were not able to be met until the federal court really limited
15 who could come into the hospital.

16 THE COURT: All right. Anyone who wants to say
17 anything in response?

18 MR. GARZA: If I may, Your Honor.

19 THE COURT: Go ahead.

20 MR. GARZA: Just quickly.

21 DR. PINALS: And one other thing --

22 THE COURT: All right. Go ahead. Doctor, are you
23 done for now? You said you had one other thing, Dr. Pinals.

24 DR. PINALS: I had one other thing, but it's up to
25 you.

1 THE COURT: Go ahead, go ahead.

2 DR. PINALS: The other thing, I have been very clear
3 to the plaintiffs I had not recommended contempt, but I've been
4 very clear with the plaintiffs and the defendants that if
5 things are not turning around, that contempt could be the next
6 step. From my position as well, having worked also in the
7 *Trueblood* matter, I agree with what the plaintiffs are saying
8 right now that contempt wouldn't necessarily turn the ship
9 faster. It would potentially lead to other decisions that get
10 made by other people, but it wouldn't necessarily get the State
11 into compliance faster. And so I think it is worth giving
12 these next steps a very serious effort before going to
13 contempt.

14 THE COURT: All right.

15 Yes?

16 MR. GARZA: Thank you, Your Honor.

17 And this is just a question. These three forensic
18 evaluators that are coming on, I don't know the answer to this,
19 but I had heard somewhere that they were moving from a
20 private -- the private sector in Oregon to FES. And if that's
21 the case, the question would be are we simply kind of moving
22 existing evaluators in Oregon from one employer to another, and
23 what would the net effect of that be, because I don't know.

24 THE COURT: I don't have that answer.

25 DR. PINALS: I can speak to that.

1 THE COURT: Go ahead.

2 DR. PINALS: Yeah. I think this is one of the
3 things -- this is one of the things that did happen in
4 Washington, was that the State absorbed all the forensic
5 evaluation services. There was one in Pierce County, a private
6 group that ended up getting pulled in. And, you know, forensic
7 evaluators are a limited commodity. I have recommended for a
8 long time that there be some way of organizing the evaluation
9 system in a more coherent manner. You have some counties that
10 have access to evaluators, you have some counties that don't
11 have access, you have evaluators that work half time for the
12 State and they work privately. When the State contracts, they
13 don't get as much productivity out of the contractors as they
14 do as if they're employees.

15 I've asked the State to look at their productivity
16 expectations again to see if those could be modified and
17 increased without burning out staff so that they quit, which is
18 not what you want for your evaluators.

19 So yes, I think there are business issues that happen
20 with these models of bringing on state employees as forensic
21 evaluators, so that will create some gaps in that private
22 system, but I think overall the recommendation is to -- I think
23 OJD agrees with this, is to develop some centralized mechanism
24 for forensic evaluations as many other states have gone to.

25 MR. MERRITHEW: I just want to add that the shorter

1 answer from my perspective to Mr. Garza's question is that the
2 private evaluators aren't actually available to the state court
3 judges because they don't have a mechanism for compelling or
4 paying for those evaluations. By moving some amount of those
5 evaluators into the state system, it opens up the ability to
6 get those evaluations when, you know, the defense lawyer, for
7 example, for many different reasons may not want to get an
8 evaluation or provide it to the court.

9 MR. WILLIAMS: Your Honor, just -- and let me premise
10 this with the reality of the last two and a half years. I've
11 had the pleasure of engaging with Dr. Pinals on a host of
12 issues in person and on the phone, and I've enjoyed it because
13 she's obviously very informative on the issues.

14 But I want to go back to the notion of -- and again,
15 I'll ask my clients this question, Dr. Pinals, but I think I
16 already know the answer based on conversations of getting amici
17 to lean in and support the legislation. I just don't see that
18 happening because they don't agree with it. They don't agree
19 with the shortened timelines. What they agree with is what
20 hasn't been addressed, and maybe contempt would do it, is
21 building the entire capacity that the State needs to build, not
22 just in the communities. There's no question that's needed,
23 but what's increased the orders that Ms. Scott brought up, you
24 know, from the defendants' argument has impacted compliance,
25 the fact is that the need for space and the need for services

1 and evaluation that judges in the counties of Oregon face every
2 day, especially in the more populated ones sitting in the
3 courtroom today, it's because that's what they're facing,
4 right? The need, the individuals described by Dr. Pinals with
5 that population has changed from the trifecta of homelessness,
6 substance abuse disorders, and mental illness. But what's also
7 increased, as is pointed out, I think, on page 7 of Mr. Garza's
8 brief, was the increase in the Oregon population, its numbers.

9 So the State hasn't addressed the State Hospital
10 level of hospitalization issue in terms of capacity forever.
11 It's, like, I'm not a rocket scientist, but come on. You can't
12 fix these problems without taking them square on. And again,
13 there's some mixture in terms of solutions to be found between
14 increased capacity at the community level, county levels, all
15 across the 36 counties of Oregon, and the bed space at OSH.
16 And if you don't increase that bed space, which I think is why
17 it wasn't studied, is because the pushback of doing that goes
18 against the grain of the common theory of decriminalization
19 of -- the so-called decriminalization of mental illness. I get
20 it and I understand it, follow through the history of
21 institutionalization, but you know what? If you're going to
22 fix a problem, you'd better wake up and recognize that capacity
23 at the state level is one of the key components to fixing your
24 failed system, because that's what it is. It's beyond crisis,
25 it's failed. And how long does that go on? I just -- I wish

1 there would be this honest assessment of the realities of what
2 we're facing, and so far there hasn't been.

3 THE COURT: I don't know, Ms. Scott, if there's
4 anything you want to say at this point.

5 MS. SCOTT: Nothing further at this time.

6 THE COURT: All right. I want us to come back here
7 sometime in January, early January, to give me an update so
8 that I can see where everyone is -- not where everyone is,
9 where the State is with making progress on these
10 recommendations that it sounds like everyone agrees should be
11 put into place and that are in place. I'm specifically
12 interested in knowing about capacity, as we've discussed here
13 today. I want to know about timelines for compliance, because
14 that will also affect the likelihood of the expansion of the
15 safety valve agreement going into place. I'm also interested
16 in knowing, which I didn't get today, but knowing what State
17 contempt fines are, the amount, and if they've grown since
18 today's hearing, because there have been other contempt orders
19 filed by state judges.

20 And at that point -- and the other thing I want to
21 know is will there be a motion filed in terms of -- from the
22 plaintiffs for contempt. If not, the Court will have to -- or
23 are you trying to have the Court decide sua sponte of their own
24 will make that decision. But I can't say it more clearly than
25 I have already said, we're not going to continue this way in

1 another six months or a year. You have a few months to turn
2 the ship around, because it's been too long, and if you need to
3 take that to the governor, if you need to take it to the
4 legislators, you can do so. It is time for this to be
5 addressed.

6 Is there anything else?

7 MR. NEIMAN: Judge Nelson, what happens to the Mosman
8 order at the end of the hearing?

9 THE COURT: It will continue. And I'm going to
10 continue -- I will continue it, and I will continue the
11 appointment -- I will extend the appointment of Dr. Pinals.

12 Do you have something that you want to say about
13 that?

14 MR. NEIMAN: I think --

15 THE COURT: And I say that in light of the motion to
16 dismiss that I have to continue to consider.

17 MR. NEIMAN: Well, it's a different link. I do think
18 that extending the Mosman order for another year does not
19 possibly send the right message of urgency. When we start
20 talking about increments of months or years --

21 THE COURT: Well, I said I was going to extend it,
22 but I may not extend it for a full year.

23 MR. NEIMAN: Okay. I don't have a proposal, and I
24 just sprung this on this entire crowd.

25 THE COURT: I understand. No, it is something to

1 think about, but I do think that it has to be extended because
2 it ends at the end of December, and we're in November, and
3 there's some things in place that there seems to be some
4 agreement that people want to give some time. I'm not sure I'm
5 going to do a full year, but there will be an extension, and if
6 I have to do extensions in shorter periods of time and in more
7 incremental settings, I will do so, but I feel at this juncture
8 that that's the decision that needs to be made.

9 MR. NEIMAN: Thank you.

10 THE COURT: But I interrupted what you were saying.
11 Is there more?

12 MR. NEIMAN: No. I was done.

13 THE COURT: All right. Mr. Merrithew.

14 MR. MERRITHEW: Question for the Court: Whether you
15 want a motion from plaintiffs to base your extension over or
16 whether you're going to do that sua sponte.

17 THE COURT: I would like a motion.

18 MR. MERRITHEW: We'll provide that motion. I think
19 the motion will likely suggest that the Court extend it to the
20 end of the legislative session, recognizing that's where we
21 want to put the pressure.

22 THE COURT: I understand that, and I'll make whatever
23 decision I make at that point.

24 All right. Thank you all. I do want a date.

25 THE COURTROOM DEPUTY: January 9th.

1 THE COURT: January 9th. Does that work for
2 everyone? I know you -- Dr. Pinals, I know you have other
3 matters you participate in as well. Let's look at your
4 calendar, if you have it, and we can discuss that.

5 DR. PINALS: That should work, Your Honor, for me.

6 THE COURT: All right.

7 MS. SCOTT: It works for the State.

8 MR. MERRITHEW: Works for us, plaintiffs.

9 THE COURT: All right.

10 MR. GARZA: We'll make it work.

11 MS. OLSON: Yes.

12 THE COURT: Fair enough. All right. Thank you all
13 again for your time and your attention.

14 Court is adjourned.

15 (Proceedings concluded at 10:27 a.m.)
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature or conformed signature is not certified.

/s/Bonita J. Shumway

November 25, 2024

BONITA J. SHUMWAY, CSR, RMR, CRR
Official Court Reporter

DATE

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